

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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LANCE IAN OSBAND,

Petitioner,

v.

NO. CIV. S-97-0152 WBS KJM

DEATH PENALTY CASE

ORDER

STEVEN W. ORNOSKI,
Acting Warden of San Quentin
State Prison,

Respondent.

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Petitioner moves for reconsideration of that portion of the Magistrate Judge's Order filed August 30, 2006, denying petitioner's motion for discovery. 28 U.S.C. § 636(b)(1)(A) allows for this court to reconsider pretrial orders of the Magistrate Judge on non-dispositive motions "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."


The court has reviewed the transcript of the proceedings and pleadings before the Magistrate Judge, together with the moving and opposing papers submitted on this motion for reconsideration, and finds the Magistrate Judge's Order of

1 August 30, 2006 to be fully supported by the law and the
2 evidence. Petitioner mischaracterizes the Magistrate Judge's
3 ruling to conclude that respondent's duty under Brady v.
4 Maryland, 373 U.S. 83 (1963), to inquire into exculpatory
5 evidence does not extend into post-conviction proceedings. That
6 is not what the Magistrate Judge held. She acknowledged that
7 continuing duty,¹ but correctly noted that "for better or worse,
8 Brady leaves it up to the state to decide what information must
9 be disclosed."²

10 The Magistrate Judge's decision to deny petitioner's
11 request that the state be ordered to certify that it had
12 conducted a reasonable inquiry and that all available
13 exculpatory evidence would be disclosed, absent a more specific
14 showing that exculpatory evidence was being withheld, was
15 neither clearly erroneous nor contrary to law.

16 IT IS THEREFORE ORDERED that petitioner's motion for
17 reconsideration of the Magistrate Judge's Order filed August 30,
18 2006, be, and the same hereby is, DENIED.

19 DATED: December 19, 2006

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21 
22 WILLIAM B. SHUBB
23 UNITED STATES DISTRICT JUDGE

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25 ¹ "There is no question that respondent has an obligation
26 that continues throughout petitioner's legal proceedings, including
27 this one, to disclose favorable information to petitioner. See
Thomas v. Goldsmith, 979 F.2d 746, 749-750 (9th Cir. 1992);
Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987)." Docket, Document
28 295, p. 5, l. 6-9.

² Id., p. 5, l. 16-17, citing Ritchie, *supra*.